



BACKGROUND

Species at risk recovery strategy delay litigation | Fall 2012

THE CASE

This lawsuit challenges the federal government's multi-year delays in producing recovery strategies for four species that would be affected by the proposed Enbridge Northern Gateway project — the Pacific Humpback Whale, Nechako White Sturgeon, Marbled Murrelet and Southern Mountain Caribou. All four species' habitat lies along the proposed Northern Gateway pipeline and shipping route. The recovery strategy for each of these species is at least three years overdue.

The species that are the subject of this litigation are a few representative examples of the many, many listed species at risk with overdue recovery strategies.

Other species at risk with delayed recovery strategies that will be impacted by Enbridge include: boreal caribou, northern goshawk (*laingii* subspecies), common nighthawk, olive-sided flycatcher, and Canada warbler.

CONTEXT

The *Species at Risk Act (SARA)* requires that recovery strategies for endangered and threatened species be created within certain time-frames, to ensure timely action towards their recovery.

There are currently **188 recovery strategies for threatened or endangered species that are past their legal due date for finalization**. Of these:

- 109 of these overdue recovery strategies are for endangered species, whose survival hangs in the balance.
 - 44 of these recovery strategies are more than six years late (including recovery strategies for two subspecies of badgers (*jacksoni* and *jeffersonii*), the Oregon spotted frog, and the screech owl (*macfarlanei* subspecies)).
 - 29 are more than three and a half years late.
- 79 of these overdue recovery strategies are for threatened species at immediate risk of becoming endangered.
 - 43 of these recovery strategies are more than five years late
 - 20 are more than three and a half years late.

Overall, **87 recovery strategies are more than five years late**, and another **49 recovery strategies are more than three and a half years late**.

WOODLAND CARIBOU

(Southern Mountain population / "Southern Mountain caribou")

Southern Mountain caribou are listed as a "threatened" species under *SARA*. Their range has shrunk, and many herds are in decline.

- Caribou are browsing animals and feed on plant material. They are the only large mammals able to use lichens as a primary food source and depend on it heavily in the winters.

- This species requires large, intact areas of mature forest that is undisturbed by industrial development, resource extraction activities, and recreational use. Once fragmented or degraded, caribou habitat takes decades to recover.
- Key threats to these herds include increased predation as a result of habitat destruction and fragmentation caused by human disturbance. They are particularly sensitive to roads and rights of way because they create more favourable conditions for predators, such as wolves.
- The proposed Enbridge Northern Gateway pipeline passes directly through the ranges of four Southern Mountain caribou herds: the Hart Ranges, Quintette, Narraway and Telkwa herds. The pipeline and related infrastructure (access roads, utility corridors, etc.) will disturb and fragment the habitat of these four herds.
 - The survival and recovery of caribou herds are interlinked; impacts of the pipeline on these four herds will also affect adjacent herds.

MARBLED MURRELET

Marbled murrelets are small fish-eating seabirds. The species is listed as “threatened” under SARA.

- Marbled murrelets forage in the ocean, primarily in coastal waters, along the length of British Columbia’s coast. They require foraging habitat that is free from high levels of marine pollution and disturbance, and which contains an adequate food supply. Marbled murrelets require coastal old-growth forest for their nests.
- In Canada marbled murrelets are found only in B.C., where their distribution has declined significantly. Key threats to marbled murrelets include destruction of the old-growth forest habitat they require for nesting, by-catch in fishing gear, and oil contamination and disturbance from ships within their marine foraging habitat.
- Marbled murrelets are sensitive to marine pollution and may be harmed by chronic, routine small emissions of oil into the ocean through refuelling of, and leaks from, oil tankers. Marbled murrelets are also sensitive to marine traffic and may abandon foraging areas that have high levels of boat traffic, such as from oil tankers.
- The marine area in northern B.C. supports one of the highest concentrations of breeding marbled murrelets in the province — more than half of B.C.’s total population occurs in the waters off the North and Central Coast and Haida Gwaii.
- The proposed Northern Gateway pipeline poses a significant risk to marbled murrelet marine foraging habitat. Environment Canada has described the seabird as a species that is particularly vulnerable to the threat of an oil spill by tankers off the B.C. coast.

HUMPBACK WHALE

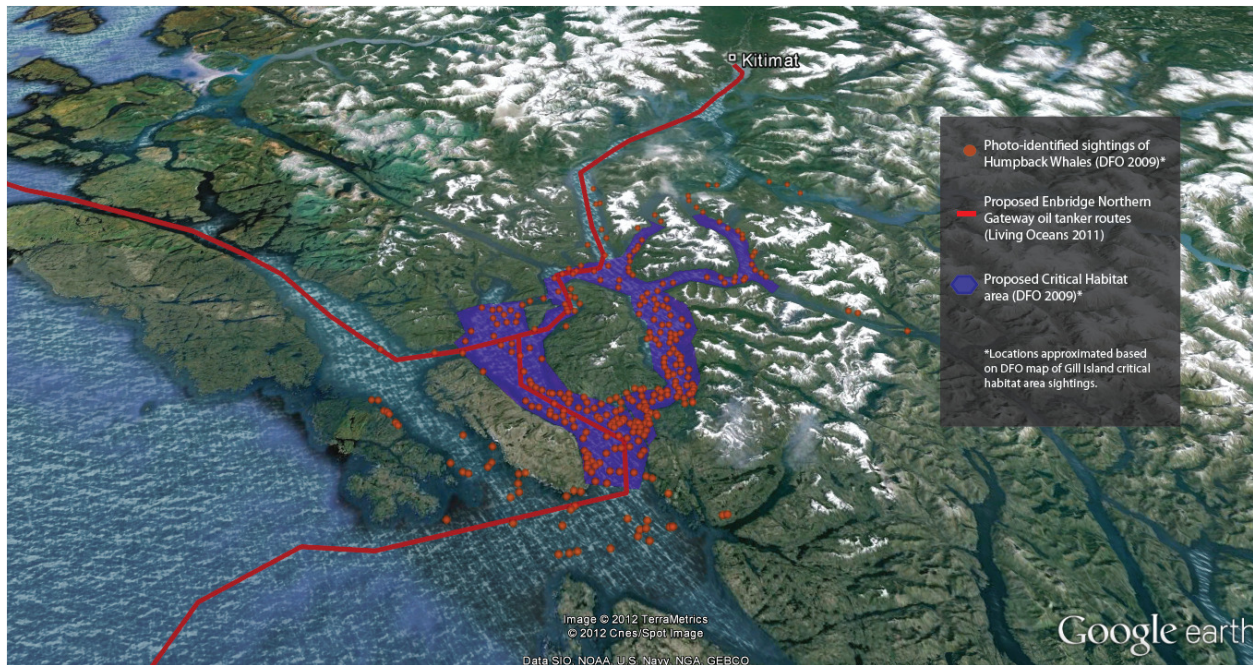
(North Pacific population / “Pacific humpback”)

The Pacific humpback whale is listed as “threatened” under SARA. These large whales are known for their complex and beautiful songs.

- The range of the Pacific humpbacks extends along the full length of the B.C. coast, where they feed on krill (shrimp-like crustaceans) and small schooling fish such as herring and mackerel. The whales require marine habitat with abundant food and that is free from excessive marine noise or chemical pollution.
- Pacific humpbacks are threatened by exposure to marine noise, chemical pollution, and collisions with ships, the probability of which increases when shipping lanes cross feeding areas.
- Four areas of critical habitat have been proposed for Pacific humpbacks in the [Draft Recovery Strategy for North Pacific humpback whales](#) (Department of Fisheries and Oceans, 2010). One of these areas in particular, Gil Island, is directly along the route oil tankers are likely to take to and from the Enbridge terminal at Kitimat (**see Fig. 1 below**).

- Currently, the waters from Douglas Channel to Caamano Sound are a relatively undisturbed area in which Pacific humpbacks escort their young calves, forage, and perform important social behaviours. This area is one of only a few locations known in B.C. where the whales bubble net feed and participate in song display.
- The introduction of daily oil tanker traffic into the critical habitat of Pacific humpbacks would increase their risk of ship-strikes, create noise pollution which may interfere with their feeding and social behaviours, and expose the whales and their essential habitat to the threat of an oil spill.

Fig. 1 - Pacific humpback whale habitat / proposed Northern Gateway tanker routes



WHITE STURGEON

(Nechako River population / “Nechako white sturgeon”)

Nechako white sturgeon is listed as “endangered” under SARA. The Nechako white sturgeon is in a critical state of decline, having dropped from an estimated 5,000 fish to approximately 360 fish, with most individuals more than 30 years old.

- The white sturgeon is Canada’s largest and longest lived freshwater fish, reaching ages of more than 100 years, and lengths of more than six metres.
- Nechako white sturgeon are found at the confluence of the Nechako and Fraser Rivers, upstream to Cheslatta Falls, as well as through much of the watershed of the Stuart River, a major tributary.
- To complete their life cycle, the Nechako white sturgeon requires sufficient suitable habitat, an abundant food supply, and cool, unpolluted water with a natural flow regime.
- The fish are threatened by pollution, and loss or damage to their habitat as a result of dams and river regulation, which prevent their offspring from surviving. Research is underway to determine how to mitigate these impacts and allow this population to successfully reproduce again. The species has survived to this point primarily because the adult fish are very long lived. The Department of Fisheries and Oceans has determined that Nechako white sturgeon cannot withstand any further harm at this time.
- Critical habitat for Nechako white sturgeon was proposed in the [Draft Recovery Strategy for White Sturgeon](#) (Department of Fisheries and Oceans, 2009). The proposed Enbridge Northern Gateway pipeline route crosses the watercourses in which the

Nechako white sturgeon live, and where their critical habitats are located, both upstream and downstream of the species' range. The construction of this pipeline would place this species, which is unable to tolerate any further harm, at risk of harm, death and habitat damage through accidents including drilling mud spills during pipeline construction or pipeline ruptures after construction is completed.

For more information, please contact:

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